

CUSTOMS BULLETIN AND DECISIONS

**Weekly Compilation of
Decisions, Rulings, Regulations, and Notices
Concerning Customs and Related Matters of the
U.S. Customs Service
U.S. Court of Appeals for the Federal Circuit
and
U.S. Court of International Trade**

VOL. 29

NOVEMBER 22, 1995

NO. 47

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Slip Op. 95-176

Abstracted Decisions:

Classification: C95/74

**DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE**

NOTICE

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U.S. Customs Service

General Notices

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, November 7, 1995.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

STUART P. SEIDEL,
*Assistant Commissioner,
Office of Regulations and Rulings.*

PROPOSED REVOCATION OF CUSTOMS RULING LETTER RELATING TO TARIFF CLASSIFICATION OF LIGHTED MAGNIFIER FOR VIDEO GAME

ACTION: Notice of proposed revocation of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling pertaining to the tariff classification of a lighted magnifier for a video game. Comments are invited on the correctness of the proposed ruling.

DATE: Comments must be received on or before December 22, 1995.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Tariff Classification Appeals Division, 1301 Constitution Avenue, NW, (Franklin Court), Washington, DC 20229. Comments submitted may be inspected at the Tariff Classification Appeals Division, Office at Regulations and Rulings, located at Franklin Court, 1099 14th Street, NW, Suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Larry Ordet, Metals and Machinery Branch, Tariff Classification Appeals Division, (202) 482-7030.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling pertaining to the tariff classification of a lighted magnifier for a video game. In New York Ruling Letter (NY) 810663, issued by the Area Director of Customs, New York Seaport, on May 30, 1995, the magnifier was held to be classifiable under subheading 9013.80.20, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other optical devices, appliances and instruments: magnifying glasses. NY 810663 is set forth in Attachment A to this document.

Customs Headquarters is of the opinion that the lighted magnifier, which is solely used to magnify and illuminate a "Gameboy" video game, is classifiable under subheading 9504.90.40, HTSUS, which provides for accessories for game machines, other than coin- or token-operated. Customs intends to revoke NY 810663 to reflect the proper classification of the magnifier under this subheading. Before taking this action, consideration will be given to any written comments timely received. Proposed Headquarters Ruling Letter 958298 revoking NY 810663 is set forth in Attachment B to this document.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: November 2, 1995.

MARVIN M. AMERNICK,
(for John Durant, Director,
Tariff Classification Appeals Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,

U.S. CUSTOMS SERVICE.

New York, NY, May 30, 1995.

CLA-2-90:S:N:N3:114 810663

Category: Classification

Tariff No. 9013.80.2000

MR. RICHARD MILLER
RECOTON CORPORATION
2950 Lake Emma Road
Lake Mary, FL 32746

Re: The tariff classification of illuminated magnifier from China.

DEAR MR. MILLER:

In your letter dated May 15, 1995, you requested a tariff classification ruling.

The illuminated magnifier, Product number V357, is composed of plastic and is designed for attachment to hand held video games. Two AA size batteries fit into the magnifier and provide power for two small bulbs. This item magnifies and illuminates the video display of hand held video games.

The applicable subheading for the illuminated magnifier will be 9013.80.2000, Harmonized Tariff Schedule of the United States (HTS), which provides for magnifying glasses. The rate of duty will be 6.6 percent *ad valorem*.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,

Area Director,

New York Seaport.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,

U.S. CUSTOMS SERVICE,

Washington, DC.

CLA-2 R:C:M 958298 LTO

Category: Classification

Tariff No. 9504.90.40

MR. RICHARD MILLER
RECOTON CORPORATION
2950 Lake Emma Road
Lake Mary, FL 32746

Re: Lighted magnifier; Section XVI, note 2; Chapter 90, note 1(k), 2; Chapter 95, note 3; Additional U.S. Rule of Interpretation 1(c); accessory; HQs 950166, 952673, 952716; NYs 812016, 812913; NY 810663 *revoked*.

DEAR MR. MILLER:

This is in response to your letter of August 7, 1995, requesting the classification of a lighted magnifier for a hand held video game under the Harmonized Tariff Schedule of the United States (HTSUS).

Facts:

The article in question is the "Light & Magnifier" for the "Gameboy," hand held video game (product number V357). The battery-powered plastic article magnifies the video

game's display screen, and, by the use of two small bulbs, illuminates it to allow the user to play the game in the dark. The light is also useful during the day to increase the contrast and sharpness of the screen.

Issue:

Whether the lighted magnifier is classifiable as an optical instrument (magnifying glass) under heading 9013, HTSUS, or as an accessory for arcade, table or parlor games under heading 9504, HTSUS.

Law and Analysis:

The General Rules of Interpretation (GRI's) to the HTSUS govern the classification of goods in the tariff schedule. GRI 1 states, in pertinent part, that "for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes * * *."

The Harmonized Commodity Description and Coding System Explanatory Notes (ENS) constitute the official interpretation of the Harmonized System. While not legally binding, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System, and are generally indicative of the proper interpretation of these headings. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The headings under consideration are as follows:

- 9013 Liquid crystal devices not constituting articles provided for more specifically in other headings; lasers, other than laser diodes; other optical appliances and instruments, not specified or included elsewhere in this chapter; parts and accessories thereof
- 9504 Articles for arcade, table or parlor games, including pinball machines, bagatelle, billiards and special tables for casino games; automatic bowling alley equipment; parts and accessories thereof

In NY 810663, issued to you on May 30, 1995, the Area Director, New York Seaport, held that the lighted magnifier was classifiable under subheading 9013.80.20, HTSUS, which provides for other optical appliances and instruments: magnifying glasses. You contend that the magnifier is classifiable as an accessory for a game machine under subheading 9504.90.40, HTSUS.

With regard to the classification of accessories, Additional U.S. Rule of Interpretation 1(c), HTSUS, states that "*in the absence of special language or context* which otherwise requires * * * a provision for 'parts' or 'parts and accessories' shall not prevail over a specific provision for such part or accessory [underlining added]." In the instant case, the "special language or context" contemplated by the above rule exists.

Note 3 to chapter 95, HTSUS, provides that "parts and accessories which are suitable for use solely or principally with articles of this chapter are to be classified with those articles." Thus, subject to note 1 to chapter 95, HTSUS (which is not at issue in this instance), if the articles in question are accessories that are solely or principally used with an article of chapter 95 (specifically, the arcade, table or parlor games of heading 9504, HTSUS), they must be classified under that heading, regardless of whether they are covered by another provision elsewhere in the tariff schedule (i.e., heading 9013, HTSUS). See HQ 952716, dated March 3, 1993 (wherein swimming pool thermometers were classified as swimming pool accessories under heading 9506, HTSUS, rather than as thermometers under heading 9025, HTSUS); Chapter 901 note 1(k), HTSUS. See also Section XVI, note 2; Chapter 90, note 2, HTSUS (for contrasting treatment of parts and/or accessories).

EN 95.04, pg. 1589, states that heading 9504, HTSUS, includes "[v]ideo games (used with a television receiver or having a self-contained screen) * * *." Thus, "Gameboy" video games are classifiable under heading 9504, HTSUS. See HQ 952673, dated February 3, 1993 (wherein the "Sega CD" video game was classified under heading 9504, HTSUS). The lighted magnifier, which is solely used with the "Gameboy" video game, magnifies and illuminates the game's display screen. The device, although not necessary to enable the game to fulfill its intended function, facilitates its use and improves its operation. See HQ 950166, dated November 8, 1991 (concerning the classification of "accessories"). Thus, the lighted magnifier is a video game accessory, and it is classifiable under subheading 9504.90.40, HTSUS, which provides for accessories for game machines. See NY 812016, dated June 29, 1995; NY 812913, dated July 26, 1995 (concerning the classification of other video game accessories under subheading 9504.90.40, HTSUS). Accordingly, NY 810663 must be revoked.

Holding:

The "Light & Magnifier" is classifiable under subheading 9504.90.40, HTSUS, which provides for accessories for game machines, other than coin- or token-operated. The corresponding rate of duty for articles of this subheading is *free*.

Effect on Other Rulings:

NY 810663, dated May 30, 1995, is revoked.

JOHN DURANT,

Director,

Tariff Classification Appeals Division.

PROPOSED REVOCATION OF RULING LETTER RELATING TO TARIFF CLASSIFICATION OF MOXIDECTIN

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling pertaining to the tariff classification of moxidectin technical concentrate (CAS# 113507-06-05). Comments are invited on the correctness of the proposed ruling.

DATE: Comments must be received on or before December 22, 1995.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Tariff Classification Appeals Division, 1301 Constitution Avenue, N.W. (Franklin Court), Washington, DC, 20229. Comments submitted may be inspected at the Tariff Classification Appeals Division, Office of Regulations and Rulings, located at Franklin Court, 1099 14th Street, N.W., Suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ann Segura Minardi, Food and Chemicals Classification Branch, (202-482-6958).

SUPPLEMENTARY INFORMATION:**BACKGROUND**

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling pertaining to the tariff classification of moxidectin. Comments are invited on the correctness of the proposed ruling.

In New York Ruling Letter (NYRL) 871563, date March 20, 1992, the merchandise was classified within subheading 2932.90.3000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for heterocyclic compounds with oxygen hetero-atom(s) only, dutiable at 3.7 percent *ad valorem*. NYRL 871563, is set forth in "Attachment A" to this document.

At this time, we have determined that the product is properly classifiable under heading 2932, HTSUSA, which provides for "Heterocyclic compounds with oxygen hetero-atom(s) only. The recommendations of the Harmonized System Committee are also noted in our decision to classify moxidectin under subheading 2932.29.5050, HTSUSA which provides for "Heterocyclic compounds with oxygen hetero-atom(s) only: Lactones: Other lactones: Other, Other" which is dutiable under the general column one rate of 3.7 percent *ad valorem*.

Customs intends to revoke NYRL 851269, to reflect the proper classification of moxidectin. Before taking this action, consideration will be given to any written comments timely received. Proposed Headquarters Ruling Letter (HRL) 956889 is set forth in "Attachment B" to this document.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: November 7, 1995.

JOHN B. ELKINS,
(for John Durant, Director,
Tariff Classification Appeals Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY.

U.S. CUSTOMS SERVICE.

New York, NY, March 20, 1992.

CLA-2-29-S:N:1:239 871563

Category: Classification

Tariff No. 2932.90.5000

MS. MARIANA DAVIDOVICH
AMERICAN CYANAMID COMPANY
LATIN AMERICA GROUP
One Cyanamid Plaza
Wayne, NJ 07470

Re: The tariff classification of moxidectin technical concentrate (CAS# 113507-06-5) from Argentina.

DEAR MS. DAVIDOVICH:

In your letter dated January 19, 1992, you requested a tariff classification ruling.

The applicable subheading for moxidectin technical concentrate will be 2932.90.5000, Harmonized Tariff Schedule of the United States (HTS), which provides for other hetero-

cyclic compounds with oxygen hetero-atom(s) only. The rate of duty will be 3.7 percent *ad valorem*.

Articles classifiable under subheading 2932.90.5000, HTS, which are products of Argentina, are entitled to duty free treatment under the Generalized System of Preferences (GAP) upon compliance with all applicable regulations.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,

Area Director,
New York Seaport.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,

U.S. CUSTOMS SERVICE,

Washington, DC.

CLA-2 RR:TC:FC 956889 ASM

Category: Classification

Tariff No. 2932.29.5050

Ms. MARIANA DAVIDOVICH
MANAGER COMMERCIAL AFFAIRS
CYANAMID
LATIN AMERICAN GROUP
GOVERNMENT & COMMERCIAL AFFAIRS
One Cyanamid Plaza
Wayne, NJ 07470

Re: Revocation of NYRL 871563 concealing the tariff classification of moxidectin technical concentrate (CAS# 113507-06-5)

DEAR Ms DAVIDOVICH:

This letter concerns the revocation of New York Ruling Letter (NYRL) 871563, dated March 20, 1992, regarding the classification of moxidectin technical concentrate (CAS# 113507-06-5).

Facts:

The subject product is identified as moxidectin technical concentrate and is imported from Argentina to be used as an anti-parasitic drug. In NYRL 871563, the merchandise was classified within subheading 2932.90.5000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for heterocyclic compounds with oxygen hetero-atom(s) only, dutiable at 3.7 percent *ad valorem*.

At this time, your company is asserting that, based upon a decision rendered by the Harmonized System Committee, the subject product is, in fact, properly classifiable within subheading 2932.29.2000, HTSUSA, which provides for lactones: other lactones: aromatic: drugs, dutiable at 7.2 percent *ad valorem*.

Issue:

What is the proper classification under the HTSUSA for moxidectin technical concentrate (CAS# 113507-06-5)?

Law and Analysis:

Classification of merchandise under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI's). As stated in GRI 1, the classification is determined first in accordance with the terms of the headings which must be read in conjunction with the relative section and chapter notes. If GRI 1 fails to classify the goods and if the headings

and legal notes do not otherwise require, the remaining GRI's are applied in their appropriate order. The Explanatory Notes to the Harmonized Commodity Description and Coding System (EN's), facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI's.

Moxidectin is comprised of a heterocyclic compound with more than one functional group in the structure. As such, we have determined that the product is properly classifiable under heading 2932, HTSUSA, which provides for "Heterocyclic compounds with oxygen hetero-atom(s) only." We further recognize the recommendations of the Harmonized System Committee in classifying moxidectin under subheading 2932.29, HTSUSA, as a lactone. However, we do not agree with Cyanamid's claim that the product is properly classifiable within subheading 2932.29.2000, HTSUSA, as an aromatic lactone.

According to Additional U.S. Note 2(a) to Section VI, HTSUSA, for the purposes of the tariff schedule, the term "aromatic" refers to chemical compounds containing one or more fused or unfused benzene rings. As evidenced by its chemical structure, moxidectin does not contain any fused or unfused benzene ring(s). Therefore, pursuant to Additional Note 2(a) to Section VI, HTSUSA, the subject product is not an "aromatic" compound for tariff purposes. Thus, it is our determination that moxidectin is properly classifiable in subheading 2932.29.5050, HTSUSA, which provides for "Lactones: Other lactones: Other, Other."

Holding:

The product, moxidectin, is properly classified under subheading 2932.29.5050, HTSUSA which provides for "Heterocyclic compounds with oxygen hetero-atom(s) only: Lactones: Other lactones: Other, Other" which is dutiable under the general column one rate of 3.7 percent *ad valorem*.

Articles classifiable under subheading 2932.29.5050, HTSUSA, which are products of Argentina, are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

NYRL, 871563 is hereby revoked.

JOHN DURANT,

Director,

Tariff Classification Appeals Division.

PROPOSED REVOCATION OF RULING LETTER RELATING TO TARIFF CLASSIFICATION OF DEXTROMETHORPHAN HYDROBROMIDE

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling pertaining to the tariff classification of Dextromethorphan hydrobromide (CAS 6700-34-1). Comments are invited on the correctness of the proposed ruling.

DATE: Comments must be received on or before December 22, 1995.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings,

Attention: Tariff Classification Appeals Division, 1301 Constitution Avenue, N.W. (Franklin Court), Washington, DC, 20229. Comments submitted may be inspected at the Tariff Classification Appeals Division, Office of Regulations and Rulings, located at Franklin Court, 1099 14th Street, N.W., Suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ann Segura Minardi, Food and Chemicals Classification Branch, (202-482-6958).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling pertaining to the tariff classification of Dextromethorphan hydrobromide (CAS 6700-34-1). Comments are invited on the correctness of the proposed ruling.

In New York Ruling Letter (NYRL) 888922, dated September 23, 1993, the merchandise was classified within subheading 2933.90.7500, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provided for, "Heterocyclic compounds with nitrogen hetero-atom(s) only; nucleic acids and their salts: Other: Aromatic or modified aromatic: Other: Drugs: Other," which was dutiable at 6.9 percent *ad valorem*. NYRL 888922, is set forth in "Attachment A" to this document.

At this time, we have determined that the product is properly classifiable under subheading 2933.40.2600, HTSUSA, which provides for "Compounds containing a quinoline or isoquinoline ring-system (whether or not hydrogenated), not further fused: Other: Drugs: Other" which is dutiable under the general column one rate of 7.8 percent *ad valorem*.

Customs intends to revoke NYRL 888922, to reflect the proper classification of Dextromethorphan hydrobromide. Before taking this action, consideration will be given to any written comments timely received. Proposed Headquarters Ruling Letter (HRL) 958151, is set forth in "Attachment B" to this document.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: November 7, 1995.

JOHN B. ELKINS,
(for John Durant, Director,
Tariff Classification Appeals Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE.
New York, NY, September 23, 1993.
CLA-2-29:S:N:N7:238 888922
Category: Classification
Tariff No. 2933.90.7500

Ms. ALICE WHITE
SST CORPORATION
635 Brighton Road (P.O. Box 1649)
Clifton, NJ 07015-1649

Re: The tariff classification of Dextromethorphan Hydrobromide U.S.P. (CAS Reg. No. 6700-34-1), imported in bulk form, from India.

DEAR MS. WHITE:

In your letter dated July 28, 1993, you requested a tariff classification ruling.

The subject merchandise, Dextromethorphan Hydrobromide U.S.P. (CAS Reg. name: 3-methoxy-17 methyl-9,13,14-morphinan, hydrobromide, monohydrate), is an antitussive drug.

The applicable subheading for this product will be 2933.90.7500 Harmonized Tariff Schedule of the United States (HTS), which provides for heterocyclic compounds with nitrogen hetero-atom(s) only; nucleic acids and their salts; other: aromatic or modified aromatic: other: drugs: other. The rate of duty will be 6.9 percent *ad valorem*.

This merchandise may be subject to the regulations of the Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, MD 20857, telephone number (202) 857-8400.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE.
Washington, DC.
CLA-2 RR:TC:FC 958151 ASM
Category: Classification
Tariff No. 2933.40.2600

Ms. ALICE M. SAKOSITS
IMPORT/SALES COORDINATOR
SST CORPORATION
635 Brighton Road (P.O. Box 1649)
Clifton, NJ 07015-1649

Re: Revocation of NYRL 888922 concerning the tariff classification of Dextromethorphan Hydrobromide (CAS 6700-34-1).

DEAR MS. SAKOSITS:

This letter concerns the revocation of New York Ruling Letter (NYRL) 888922, dated September 23, 1993, regarding the classification of Dextromethorphan hydrobromide (CAS 6700-34-1).

Facts:

The subject product is identified as Dextromethorphan hydrobromide and is imported from India for use as an antitussive drug. In NYRL 888922, the merchandise was classified within subheading 2933.90.7500, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provided for, "Heterocyclic compounds with nitrogen heteroatom(s) only; nucleic acids and their salts: Other: Aromatic or modified aromatic: Other: Drugs: Other," which was dutiable at 6.9 percent *ad valorem*.

Issue:

What is the proper classification under the HTSUSA for Dextromethorphan hydrobromide (CAS 6700-34-1)?

Law and Analysis:

Classification of merchandise under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI's). As stated in GRI 1, the classification is determined first in accordance with the terms of the headings which must be read in conjunction with the relative section and chapter notes. If GRI 1 fails to classify the goods and if the headings and legal notes do not otherwise require, the remaining GRI's are applied in their appropriate order. The Explanatory Notes to the Harmonized Commodity Description and Coding System (EN's), facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI's.

It has been determined by Customs that Dextromethorphan hydrobromide possesses therapeutic properties as an antitussive drug, and is therefore classifiable under Chapter 29, as a "drug." Further, it is our position that Dextromethorphan hydrobromide contains a "bridged" but not further "fused" isoquinoline ring and should be classified within subheading 2933.40, HTSUSA.

The EN's to subheading 2933.40, HTSUSA, state that this subheading shall include, "Quinoline, isoquinoline, and their derivatives, 2 ring systems comprising a benzene ring fused to a pyridine ring." The functional group features of Dextromethorphan hydrobromide are specifically provided for within subheading 2933.40.2600, HTSUSA, which includes "Compounds containing a quinoline or isoquinoline ring-system (whether or not hydrogenated), not further fused: Other: Drugs: Other."

Holding:

The product, Dextromethorphan Hydrobromide (CAS 6700-34-1), is properly classified under subheading 2933.40.2600, HTSUSA, which provides for "Compounds containing a quinoline or isoquinoline ring-system (whether or not hydrogenated), not further fused: Other: Drugs: Other" which is dutiable under the general column one rate of 7.8 percent *ad valorem*.

NYRL 871563 is hereby revoked.

JOHN DURANT,

Director,

Tariff Classification Appeals Division.

**PROPOSED MODIFICATION OF RULING LETTER RELATING
TO TARIFF CLASSIFICATION OF HYDRAULIC LIFTING
ROLLERS**

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed modification of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify a ruling relating to the tariff classification of hydraulic lifting rollers. These articles utilize hydraulic pressure to raise or lift heavy tools in large power presses. Customs invites comments on the correctness of the proposed modification.

DATE: Comments must be received on or before December 22, 1995.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Tariff Classification Appeals Division, 1301 Constitution Avenue, N.W. (Franklin Court), Washington, DC 20229. Submitted comments may be inspected at the Tariff Classification Appeals Division, Office of Regulations and Rulings, located at Franklin Court, 1099 14th. Street, N.W., Suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Tariff Classification Appeals Division (202) 482-7030.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify a ruling relating to the tariff classification of DLF hydraulic lifting rollers. Customs invites comments on the correctness of the proposed modification.

In NY 863582, dated June 19, 1991, the DLF hydraulic lifting rollers were held to be classifiable as other special attachments for machine tools, in subheading 8466.30.50, Harmonized Tariff Schedule of the United States (HTSUS). This ruling was based on the belief that, by function, the articles enabled tool dies to be easily maneuvered into position on a press. NY 863582 is set forth as "Attachment A" to this document. It is now Customs position that these hydraulic lifting rollers or die lifters perform a lifting or handling function appropriate to goods of heading 8428.

Customs intends to modify NY 863582 to reflect the proper classification of hydraulic lifting rollers under subheading 8428.90.00, HTSUS, as other lifting, handling, loading or unloading machinery. Before taking this action, we will give consideration to any written comments timely received. Proposed HQ 958621 modifying NY 863582 is set forth as "Attachment B" to this document.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: November 6, 1995.

MARVIN M. AMERNICK,
(for John Durant, Director,
Tariff Classification Appeals Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, June 19, 1991.

CLA 84:S:N:1:103 863582
Category: Classification
Tariff No. 8466.10.0010, 8466.30.3000,
8466.30.5000, and 8428.90.0090

MR. MICHAEL B. MAROGIL
NNR AIRCARGO SERVICE (USA) INC.
765 Dillon Drive
Wood Dale, IL 60191-1596

Re: The tariff classification of die changing apparatus from Japan.

DEAR MR. MAROGIL:

In your letter dated May 9, 1991 on behalf of AIOI (USA) Inc. you requested a tariff classification ruling.

You submitted literature depicting articles used with mechanical and hydraulic presses to facilitate the changing of press dies. The five articles you specifically inquired about are:

1. TX series and TY series hydraulic clamps—these are used to secure the die firmly to the press bed. TX series piston clamps are steel articles which utilize hydraulic pressure to extend a clamp rod, thus locking the die in place. They are custom machined to fit any T-slot dimension. TY series lever clamps are designed for use on dies without U-cuts. Hydraulic pressure applied to one end of a lever causes the other end to descend and lock the die down. Both types of clamps come in several sizes, with clamping forces ranging from 9,800 to 245,000 newtons.

2. Model DR spring operated die lifters and rollers—these consist of a series of adjustable spring-mounted rollers in a metal channel. They are placed in the T-slot or U-slot of the press bed and enable the die to be easily maneuvered into its proper position. They do not contain a power source. They are available in lengths ranging from 250 to 1550 millimeters.

3. Model DLF hydraulic lifting rollers—these are similar to the spring operated die lifters discussed above, but incorporate hydraulic cylinders to temporarily raise the rollers up to 4 millimeters above the press bed.

4. Model PR die change pre-rollers—these are attached to the front of the press bed by means of mounting blocks. They support the die as it is pulled out of the press so that the

die can be lifted off by a crane or forklift. They consist of a series of fixed rollers mounted in a frame, with a die stopper at the tip to prevent the die from accidentally rolling off.

5. Die changing carts—these are self-propelled carts, running on rails alongside the press, for carrying the dies to and from a storage rack. A series of rollers in the cart top are used to automatically push the die into the press, or pull it from the press, thus reducing the time and manpower needed to change dies.

The applicable subheading for the TX and TY series hydraulic clamps will be 8466.10.0010, Harmonized Tariff Schedule of the United States (HTS), which provides for tool holders for forming-type or cutting-type dies. The rate of duty will be 4.9 percent *ad valorem*.

The applicable subheading for the model DR spring operated die lifters and rollers, and for the model PR die change pre-rollers, will be 8466.30.5000, HTS, which provides for other special attachments for machine tools: other. The rate of duty will be 9.5 percent *ad valorem*.

For the model DLF hydraulic lifting rollers the applicable subheading will be 8466.30.3000, HTS, which provides for other special attachments for machine tools: machines. The rate of duty will be 3.7 percent *ad valorem*.

Finally, the applicable subheading for the die change carts will be 8428.90.0090, HTS, which provides for other lifting, handling, loading or unloading machinery: other machinery: other. The rate of duty will be 2 percent *ad valorem*.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 R:C:M 958621 JAS
Category: Classification
Tariff No. 8428.90.00

MR. MICHAEL B. MAROGIL
NNR AIRCARGO SERVICE (USA) INC.
765 Dillon Drive
Wood Dale, IL 60191-1596

Re: NY 863582 Modified; DLF hydraulic lifting rollers, hydraulic roller die lifters, lifting, handling, loading, unloading machinery; Section XVI, Note 2; parts and accessories of machine tools, including special attachments for machine tools, subheading 8466.30.30.

DEAR MR. MAROGIL:

In NY 863582, dated June 19, 1991, issued to you on behalf of **AIOI (USA) Inc.**, certain model DLF hydraulic lifting rollers, were held to be classifiable in subheading 8466.30.30, Harmonized Tariff Schedule of the United States (HTSUS), as other special attachments solely or principally used with machine tools. This classification is incorrect and no longer represents the position of the Customs Service.

Facts:

The articles in question are the model DLF hydraulic lifting rollers used with heavy machine tool presses. Hydraulic lifting rollers, also called hydraulic roller die lifters or hydraulic rollblocks, are used with large power presses to lift, position or otherwise manipulate dies or tools used with the press. As imported, these articles typically consist of a machined steel block drilled and ported to provide a passage for pressurized hydraulic fluid.

Each block has numerous holes machined into it that act as cylinders, each of which is fitted with a U-shaped piston. A ball or transfer unit consisting of a metal body encasing a large, hollow steel ball or roller which freely rotates on a bed of smaller, solid steel balls, is inserted into each piston. When hydraulic pressure is applied the pistons move upward inside the cylinders causing the balls or rollers to raise or lower. This permits heavy dies or tools used with the press to be lifted and handled.

The provisions under consideration are as follows:

8428	Other lifting, handling, loading or unloading machinery * * *:
8428.90.00	Other machinery * * * 1.6 percent
*	*
8466	* * * [D]ividing heads and other special attachments for machine tools * * *:
8466.30	Dividing heads and other special attachments for machine tools:
	Other special attachments:
8466.30.30	Machines * * * 3.5 percent

Issue:

Whether hydraulic roller die lifters are lifting or handling machinery of heading 8428.

Law and Analysis:

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). GRI 1 states in part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The **Harmonized Commodity Description And Coding System Explanatory Notes (ENs)** constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the **ENs** provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the notes should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

Subject to certain exceptions that are not relevant here, goods that are identifiable parts of machines or apparatus of chapters 84 or 85 are to be classified in accordance with Section XVII, Note 2, HTSUS. Note 2(a) states that parts which are goods included in any of the headings of chapters 84 and 85 (other than headings 8485 and 8548) are in all cases to be classified in their respective headings. Notes 2(b) and (c) provide for parts that are not classifiable by virtue of Note 2(a).

In this case, literature on hydraulic die lifters believed to be identical to the ones in issue here describe how the pistons in each segment "raise" the whole ledge thus allowing the tool to be "moved" in a linear direction. The literature describes how the balls of the transfer unit are "raised", thus guaranteeing easy "handling" and "positioning" of the press tools. The name *die lifter* is indicative of their function.

Relevant **ENs**, at p. 1197, indicate that heading 84.28 covers a wide range of machinery for the mechanical handling of materials, goods, etc. that remain in the heading even if specialized for a particular industry. Additional **ENs**, at p. 1200, state that lifting or handling devices are often used with furnaces, converters, rolling mills, etc., e.g., machines for inserting, handling or withdrawing the pieces being worked; for manipulating doors, covers, hearths, etc. Machines used in certain types of furnaces for inserting or removing, by the action of cylinders fitted with rams or pistons, the objects being treated in the furnace.

The function and design of the hydraulic lifting rollers in issue, together with the cited **ENs**, indicate that they perform a lifting or handling function. Under Section XVI, Note 2(a), they are goods included in heading 8428.

Holding:

Under the authority of GRI 1, the DLF hydraulic lifting rollers are provided for in heading 8428. They are classifiable in subheading 8428.90.00, HTSUS, as other machinery.

NY 863582, dated June 19, 1991, is modified accordingly.

JOHN DURANT,

Director,

Tariff Classification Appeals Division.

**PROPOSED MODIFICATION OF CUSTOMS RULING LETTERS
RELATING TO TARIFF CLASSIFICATION OF ARTICLES MADE
FROM PLAITING MATERIALS**

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed modification of tariff classification ruling letters.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057 (1993)), this notice advises interested parties that Customs intends to modify five ruling letters pertaining to the tariff classification of decorative wall hangings and baskets made from plaiting materials. Comments are invited with respect to correctness of the proposed rulings.

DATE: Comments must be received on or before December 22, 1995.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Tariff Classification Appeals Division, 1301 Constitution Avenue, NW (Franklin Court), Washington, DC 20229. Comments submitted may be inspected at the Tariff Classification Appeals Division, Office of Regulations and Rulings, located at Franklin Court, 1099 14th St., N.W., Suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Greg Deutsch, Office of Regulations and Rulings, Textile Branch, (202) 482-6976.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057 (1993)), this notice advises interested parties that Customs intends to modify five ruling letters pertaining to the classification of decorative wall hangings and baskets made from plaiting materials. Comments are invited with respect to the correctness of the proposed rulings.

In the following ruling letters, Customs classified wall hangings and baskets made essentially from plaiting materials either as other textile furnishing articles, as knotted netting of twine cordage or rope, or as other made up textile articles, in headings 6304, 5608, or 6307 (respectively), Harmonized Tariff Schedule of the United States (HTSUS): New York Ruling Letter (NYRL) 804311, dated November 29, 1994; NYRL 804312, dated November 29, 1994; Laredo District (now Port) Ruling Letter (DD) 804314, dated December 14, 1994; DD 804366,

dated December 14, 1994, (Laredo); and DD 804367, dated December 8, 1994 (Newark). These rulings are set forth, respectively as Attachments "A" through "E" to this document

It is Customs position that, since the goods subject to the above cited rulings are essentially composed of unspun, untwisted natural textile fibers, they are not classifiable as textile products of headings 5608, 6304, or 6307, HTSUS, and should be classified in subheading 4602.10, HTSUS, as articles made directly to shape from plaiting materials. The following proposed rulings modifying, respectively, the rulings set forth as Attachments "A" through "E" above, are set forth as Attachments "F" through "J" to this document: 958012; 958551; 958552; 958553; and 958554.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: November 7, 1995.

HUBBARD VOLENICK,
(for John Durant, Director,
Tariff Classification Appeals Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, November 29, 1994.
CLA-2-63:S:N:6:349 804311
Category: Classification
Tariff No. 6304.99.3500

MR. BERNARD D. LIBERATI
MORRIS FRIEDMAN & CO.
320 Walnut Street
Philadelphia, PA 19106-3883

Re: The tariff classification of an abaca bat wall hanging from the Philippines.

Dear Mr. Liberati:

In your letter dated November 4, 1994, received in this office on November 17, 1994, you requested a tariff classification ruling on behalf of your client Don Wasserman, International.

The submitted sample, DS-035G—Halloween Craft Bat, is a decorative wall hanging. The bat which measures approximately $8\frac{1}{2} \times 14$ inches is made from abaca fibers and a metal frame. Abaca fibers wrap the bat-shaped frame while additional abaca fibers fill in the open areas with stable open meshes forming a net-like fabric.

The applicable subheading for the abaca bat wall hanging will be 6304.99.3500, Harmonized Tariff Schedule of the United States (HTS), which provides for other furnishing articles, excluding those of heading 9404, other, not knitted or crocheted, of other textile materials: other: of vegetable fibers (except cotton): other. The duty rate will be 12.8 percent *ad valorem*.

This product falls within textile category designation 899. Based upon international textile trade agreements products of the Philippines classified in this subheading are not currently subject to visa or quota requirements.

The designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you check, close to the time of shipment, the Status Report on Current Import Quotas (Restraint Levels), an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, November 29, 1994.

CLA-2-63:S:N:6:349 804312
Category: Classification
Tariff No. 6304.99.3500

MR. BERNARD D. LIBERATI
MORRIS FRIEDMAN & CO.
320 Walnut Street
Philadelphia, PA 19106-3883

Re: The tariff classification of an abaca Halloween wall hanging from the Philippines.

DEAR MR. LIBERATI:

In your letter dated November 4, 1994, received in this office on November 17, 1994, you requested a tariff classification ruling on behalf of your client Don Wasserman, International.

The submitted sample, DS-035G—Halloween Craft BOO, is a decorative wall hanging. The item which measures approximately $9 \times 17\frac{1}{2}$ inches is made from abaca fibers and a metal frame. The hanging forms the word "BOO". Abaca fibers wrap the metal frame while additional abaca fibers fill in the open areas of the letters with stable open meshes forming a net-like fabric.

The applicable subheading for the abaca Halloween wall hanging will be 6304.99.3500 Harmonized Tariff Schedule of the United States (HTS), which provides for other furnishing articles, excluding those of heading 9404, other, not knitted or crocheted, of other textile materials: other: of vegetable fibers (except cotton): other. The duty rate will be 12.8 percent *ad valorem*.

This product falls within textile category designation 899. Based upon international textile trade agreements products of the Philippines classified in this subheading are not currently subject to visa or quota requirements.

The designated textile and apparel categories may be subdivided into parts. If so visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you check, close to the time of shipment, the Status Report on Current Import Quotas (Restraint Levels), an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Laredo, TX, December 14, 1994.

CLA-2-56 L:CO:H17: 804314
Category: Classification
Tariff No. 5608.90.3000

MR. BERNARD D. LIBERATI
MORRIS FRIEDMAN & COMPANY
320 Walnut Street
Philadelphia, PA 19106-3883

Re: The tariff classification of baskets from the Philippines.

DEAR MR. LIBERATI:

In your letter dated November 4, 1994 you requested a tariff classification ruling on behalf of Don Wasserman, International.

The submitted sample (Style DS-015) is a set of two round baskets with handles that consist of netting composed of intertwined abaca cord. The sample has metal wire, wrapped with abaca cord, incorporated within the rim, handle and base to provide strength and stability.

The applicable subheading for the baskets (Style number DS-015) will be 5608.90.3000, Harmonized Tariff Schedule of the United States (HTS), which provides for knotted netting of twine, cordage or rope; made up fishing nets and other made up nets, of textile materials, other, other, other. The duty rate will be 10 percent *ad valorem*.

Articles classifiable under subheading 5608.90.3000, HTS, which are products of the Philippines are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

LINDA A. WILCOX,
(for Audrey Adams,
District Director.)

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY,

U.S. CUSTOMS SERVICE,

Laredo, TX, December 14, 1994.

CLA-2-56 L:CO:H17: 804366

Category: Classification

Tariff No. 5608.90.3000

MR. BERNARD D. LIBERATI
MORRIS FRIEDMAN & COMPANY
320 Walnut Street
Philadelphia, PA 19106-3883

Re: The tariff classification of a Halloween basket from the Philippines.

DEAR MR. LIBERATI:

In your letter dated November 4, 1994 you requested a tariff classification ruling on behalf of Don Wasserman, International.

The submitted sample (Style DS-036) is a round basket with a handle. The basket consists of netting composed of intertwined abaca cord and has metal wire, incorporated within the rim, handle and base to provide strength and stability. A small figure of a ghost carrying a pumpkin is attached to the outside of the basket.

The applicable subheading for the Halloween basket (Style number DS-036) will be 5608.90.3000. Harmonized Tariff Schedule of the United States (HTS), which provides for knotted netting of twine, cordage or rope; made up fishing nets and other made up nets, or textile materials, other, other, other. The duty rate will be 10 percent *ad valorem*.

Articles classifiable under subheading 5608.90.3000, HTS, which are products of the Philippines are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

LINDA A. WILCOX,
(for Audrey Adams,
District Director.)

[ATTACHMENT E]

DEPARTMENT OF THE TREASURY,

U.S. CUSTOMS SERVICE,

Newark, NJ, December 8, 1994.

CLA-2-63:N:T:B1:G16 804367

Category: Classification

Tariff No. 6307.90.9989

MR. BERNARD D. LIBERATI
MORRIS FRIEDMAN & COMPANY
320 Walnut Street
Philadelphia, PA 19106-3883

Re: The tariff classification of grass craft hats from the Philippines.

DEAR MR. LIBERATI:

In your letter dated November 4, 1994, you requested a tariff classification ruling.

The grass craft hats, item DS-018, are made of texturized woven grass material. They come in various sizes measuring from approximately 4 inches to 7 and 1/2 inches in diameter. Samples were submitted.

The applicable subheading for the hats will be 6307.90.9989, Harmonized Tariff Schedule of the United States (HTS) which provides for Other made up articles * * * other, other. The rate or duty will be 7 percent *ad valorem*.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

KATHLEEN M. HAAGE,

*Area Director,
Newark.*

[ATTACHMENT F]

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE,

Washington, DC.

CLA-2 R:C:T 958012 GGD

Category: Classification

Tariff No. 4602.10.8000

MR. BERNARD D. LIBERATI

MORRIS FRIEDMAN & CO.

320 Walnut Street

Philadelphia, PA 19106-3883

Re: Modification of New York Ruling Letter (NYRL) 804311; "Abaca Bat Wall Hanging;" articles made directly to shape from plaiting materials; not other textile furnishing articles nor festive articles.

DEAR MR. LIBERATI:

This letter is in response to your request dated May 8, 1995, on behalf of your client, Don Wasserman, International, for reconsideration of NYRL 804311, issued November 29, 1994, concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of an article identified as an "Abaca Bat Wall Hanging" imported from the Philippines. A sample was submitted with the request. An NYRL 804311, Customs classified the merchandise in subheading 6304.99.3500, HTSUSA, textile category 899, the provision for "Other furnishing articles, excluding those of heading 9104: Other: Not knitted or crocheted, of other textile materials: Other: Of vegetable fibers (except cotton): Other." We have reviewed that ruling and have found it to be partially in error. The correct classification is as follows.

Facts:

The sample article, identified as an "Abaca Bat Wall Hanging" and further identified by item no. DS-035G, is a decorative, flat representation of a bat, that is composed of black abaca fibers wrapped around a bat-shaped, metal frame. The item measures approximately 8½ inches in height by 14 inches in width. Within the wire frame is suspended an open-work, netlike mesh "filling" of unspun, untwisted, abaca fibers.

Issues:

- (1) Whether the item is classified in heading 9505, HTSUS, as a festive article.
- (2) If not classifiable as a festive article, whether the item is classifiable in heading 6304, HTSUS, as an other textile furnishing article, or in heading 4602, HTSUS, as an article made from plaiting materials.

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the harmonized system is such that virtually all goods are classified by application of GRI 1, that is, accordingly to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied. The Explanatory Notes (EN)

to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRIs.

Heading 9505, HTSUSA, provides for, among other items, festive, carnival or other entertainment articles. The EN to heading 9505 states, in part, that the heading covers:

(A) Festive, carnival or other entertainment articles, which in view of their intended use are generally made of non-durable material. They include:

- (1) Decorations such as festoons, garlands, Chinese lanterns, etc., as well as various decorative articles made of paper, metal foil, glass fibre, etc., for Christmas trees (e.g., tinsel, stars, icicles), artificial snow, coloured balls, bells, lanterns, etc. Cake and other decorations (e.g., animals, flags) which are traditionally associated with a particular festival are also classified here.

In general, merchandise is classifiable in heading 9505, HTSUSA, as a *festive article* when the article, as a whole:

1. is of non-durable material or, generally, is not purchased because of its extreme worth, or intrinsic value (e.g., paper, cardboard, metal foil, glass fiber, plastic, wood);
2. functions primarily as a decoration (e.g., its primary function is not utilitarian); and
3. is traditionally associated or used with a particular festival (e.g., stockings and tree ornaments for Christmas, decorative eggs for Easter).

An article's satisfaction of these three criteria is indicative of classification as a festive article. The motif of an item is not dispositive of its classification and, consequently, does not transform an item into a festive article.

We consider the "abaca bat wall hanging" to be made of non-durable material (since it is not designed for sustained wear and tear, nor is it purchased because of its extreme worth or value). The item is also primarily decorative in function.

With respect to the third criterion, however, we find that bats are not traditionally associated with a particular festival. Although frightening to some, bats are viewed by others as mammals that provide insect control, fertilizer, etc. Bats are not the same types of articles cited in the EN to 9505, as examples of traditional, festive articles, nor do they particularly relate to Halloween. In light of the above, the goods are not classified in heading 9505, HTSUS, and must be classified elsewhere.

Heading 6304, HTSUS, covers other furnishing articles of textiles. The EN to heading 6304 indicate that the heading covers textile furnishing articles, including wall hangings, for use in ceremonies (e.g., weddings or funerals), and in the home, public buildings, theatres, churches, etc. As noted in the FACTS section, however, the non-metal portion of this wall hanging is composed of **unspun**, untwisted fibers. As such, it is not classifiable as a textile product in heading 6304.

Heading 4602, HTSUS, provides for "Basketwork, wickerwork and other articles, made directly to shape from plaiting materials or made up from articles of heading 4601; articles of loofah." In pertinent part, note 1 to chapter 46, HTSUS, states that:

"[i]n this chapter the expression "*plaiting materials*" means materials in a state or form suitable for plaiting, interlacing or similar processes; it includes straw *** strips of wood, strips of other vegetable material (for example, raffia, narrow leaves or strips cut from broad leaves) or bark, **unspun** [emphasis added] natural textile fibers ***.

Although as previously noted, the "abaca bat wall hanging" is constructed from both wire and fibers, the essential character of the whole is clearly imparted by the unspun natural textile fibers, not the wire. It is our determination that the article is classified in heading 4602, HTSUS. The proper subheading is 4602.10.8000, HTSUSA.

Holding:

The article identified as an "Abaca Bat Wall Hanging" and further identified by item no. DS-035G, is properly classified in subheading 4602.10.8000, HTSUSA, the provision for "Basketwork, wickerwork and other articles, made directly to shape from plaiting materials or made up from articles of heading 4601; articles of loofah: Of vegetable materials: Other: Other: Other." The applicable duty rate is 2.3 percent *ad valorem*.

NYRL 804311, issued November 29, 1994, is hereby modified.

JOHN DURANT,
Director,
Tariff Classification Appeals Division.

[ATTACHMENT G]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 R:C:T 958551 GGD

Category: Classification

Tariff No. 4602.10.8000

MR. BERNARD D. LIBERATI
MORRIS FRIEDMAN & CO.
320 Walnut Street
Philadelphia, PA 19106-3883

Re: Modification of New York Ruling Letter (NYRL) 804312; "BOO' Halloween Wall Hanging;" articles made directly to shape from plaiting materials: not other textile furnishing articles nor festive articles.

DEAR MR. LIBERATI:

This letter is in response to your request dated May 8, 1995, on behalf of your client, Don Wasserman, International, for reconsideration of NYRL 804312, issued November 29, 1994, concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of an article identified as an "BOO' Halloween Wall Hanging" imported from the Philippines. A sample was submitted with the request. An NYRL 804312, Customs classified the merchandise in subheading 6304.99.3500, HTSUSA, textile category 899, the provision for "Other furnishing articles, excluding those of heading 9404: Other: Not knitted or crocheted, of other textile materials: Other: Of vegetable fibers (except cotton): Other." We have reviewed that ruling and have found it to be partially in error. The correct classification is as follows.

Facts:

The sample article, identified as an "Halloween Craft Assortment" and further identified by item no. DS-035G, is a decorative, flat layout of the exclamation "BOO", measuring approximately 9 inches in height by 17½ inches in width. The wall hanging is composed of black abaca fibers wrapped around the wire inner and outer edges of each of the 3 connected letters. The edges comprise metal frames within which is suspended openwork, net-like mesh "filing" of unspun, untwisted, abaca fibers.

Issues:

- (1) Whether the item is classified in heading 9505, HTSUS, as a festive article.
- (2) If not classifiable as a festive article, whether the item is classifiable in heading 6304, HTSUS, as an other textile furnishing article, or in heading 4602, HTSUS, as an article made from plaiting materials.

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the harmonized system is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRIs.

Heading 9505, HTSUSA, provides for, among other items, festive, carnival or other entertainment articles. The EN to heading 9505 states, in part, that the heading covers:

(A) Festive, carnival or other entertainment articles, which in view of their intended use are generally made of non-durable material. They include:

- (1) Decorations such as festoons, garlands, Chinese lanterns, etc., as well as various decorative articles made of paper, metal foil, glass fibre, etc., for Christmas trees (e.g., tinsel, stars, icicles), artificial snow, coloured balls, bells, lanterns, etc. Cake and other decorations (e.g., animals, flags) which are traditionally associated with a particular festival are also classified here.

In general, merchandise is classifiable in heading 9505, HTSUSA, as a *festive article* when the article, as a whole:

1. is of non-durable material or, generally, is not purchased because of its extreme worth, or intrinsic value (e.g., paper, cardboard, metal foil, glass fiber, plastic, wood);
2. functions primarily as a decoration (e.g., its primary function is not utilitarian); and
3. is traditionally associated or used with a particular festival (e.g., stockings and tree ornaments for Christmas, decorative eggs for Easter).

An article's satisfaction of these three criteria is indicative of classification as a festive article. The motif of an item is not dispositive of its classification and, consequently, does not transform an item into a festive article.

We consider the "'BOO' wall hanging" to be made of non-durable material (since it is not designed for sustained wear and tear, nor is it purchased because of its extreme worth or value). The item is also primarily decorative in function.

With respect to the third criterion, however, we find that neither wall hangings nor the word "boo" is traditionally associated with a particular festival. Although the word is sometimes used to frighten people, it has other meanings and uses, such as to express disapproval, contempt, etc. A wall hanging of the word "boo" is not the same type of article as those cited in the EN to 9505, as examples of traditional, festive articles, nor does it particularly relate to Halloween. In light of the above, the item is not classified in heading 9505, HTSUS, and must be classified elsewhere.

Heading 6304, HTSUS, covers other furnishing articles of textiles. The EN to heading 6304 indicate that the heading covers textile furnishing articles, including wall hangings, for use in ceremonies (e.g., weddings or funerals), and in the home, public buildings, theatres, churches, etc. As noted in the FACTS section, however, the non-metal portion of this wall hanging is composed of **unspun**, untwisted fibers. As such, it is not classifiable as a textile product in heading 6304.

Heading 4602, HTSUS, provides for "Basketwork, wickerwork and other articles, made directly to shape from plaiting materials or made up from articles of heading 4601; articles of loofah." In pertinent part, note 1 to chapter 46, HTSUS, states that:

"[i]n this chapter the expression "*plaiting materials*" means materials in a state or form suitable for plaiting, interlacing or similar processes; it includes straw * * * strips of wood, strips of other vegetable material (for example, raffia, narrow leaves or strips cut from broad leaves) or bark, **unspun** [emphasis added] natural textile fibers * * *."

Although as previously noted, the "'BOO' Halloween Wall Hanging" is constructed from both wire and fibers, the essential character of the whole is clearly imparted by the unspun natural textile fibers, not the wire. It is our determination that the article is classified in heading 4602, HTSUS. The proper subheading is 4602.10.8000, HTSUSA.

Holding:

The article identified as an "'BOO' Halloween Wall Hanging" and a "Halloween Craft Assortment" (item no. DS-035G), is properly classified in subheading 4602.10.8000, HTSUSA, the provision for "Basketwork, wickerwork and other articles, made directly to shape from plaiting materials or made up from articles of heading 4601; articles of loofah: Of vegetable materials: Other: Other." The applicable duty rate is 2.3 percent *ad valorem*.

NYRL 804312, issued November 29, 1994, is hereby notified.

JOHN DURANT,
Director,
Tariff Classification Appeals Division.

[ATTACHMENT H]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 R:C:T 958552 GGD
Category: Classification
Tariff No. 4602.10.8000

MR. BERNARD D. LIBERATI
MORRIS FRIEDMAN & CO.
320 Walnut Street
Philadelphia, PA 19106-3883

Re: Modification of Laredo District (now Port) Ruling Letter (DD) 804314; "Abaca Baskets with Handles;" articles made directly to shape from plaiting materials; not knotted netting of twine, cordage or rope.

DEAR MR. LIBERATI:

This letter is in response to your request dated May 8, 1995, on behalf of your client, Don Wasserman, International, for reconsideration of DD 804314, issued December 14, 1994, concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of a pair of round abaca baskets with handles, imported from the Philippines. A sample was submitted with the request. In DD 804314, Customs classified the merchandise in subheading 5608.90.3000, HTSUSA, the provision for "Knotted netting of twine, cordage or rope; made up fishing nets and other made up nets, of textile materials: Other: Other: Other." We have reviewed that ruling and have found it to be partially in error. The correct classification is as follows.

Facts:

The samples (which, unlike the subjects of DD 804314, are heart-shaped), identified as "Abaca Baskets with Handles" and further identified by item no. DS-015, are 2 baskets with handles, measuring approximately 5 inches by 6 inches, and 6 inches by 7 inches, respectively. From the basket bottoms to the tops of the handles, the items measure 7 inches and 8½ inches in height, respectively. The baskets; frames and handles are composed of unspun abaca fibers wrapped around wire. Within the basket frames is a net-like, openwork mesh, formed by unspun, untwisted abaca fibers.

Issue:

Whether the baskets are classifiable in heading 5608, HTSUS, as knotted netting of twine, cordage or rope * * * other made up nets, of textile materials; or in heading 4602, HTSUS, as articles made from plaiting materials.

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the harmonized system is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRIs.

Heading 5608, HTSUS, essentially covers knotted netting composed of materials that have been twisted, spun, braided, or otherwise woven together. As noted in the FACTS section, the goods are composed of wire and **unspun**, untwisted fibers. As such, the baskets are not classifiable as textile products of heading 5608.

Heading 4602, HTSUS, provides for "Basketwork, wickerwork and other articles, made directly to shape from plaiting materials or made up from articles of heading 4601; articles of loofah." In pertinent part, note 1 to chapter 46, HTSUS, states that:

"[i]n this chapter the expression "*plaiting materials*" means materials in a state or form suitable for plaiting, interlacing or similar processes; it includes straw * * * strips of wood, strips of other vegetable material (for example, raffia, narrow leaves or strips cut from broad leaves) or bark, **unspun** [emphasis added] natural textile fibers * * *

Although each basket is constructed from both wire and abaca, the essential character of the whole is clearly imparted by the unspun, untwisted, natural textile fibers, not the wire. We find that the articles are classified in heading 4602, HTSUS. The proper subheading is 4602.10.1800, HTSUSA.

Holding:

The "Abaca Baskets with Handles" (item no. DS-015) are properly classified in subheading 4602.10.8000, HTSUSA, the provision for "Basketwork, wickerwork and other articles, made directly to shape from plaiting materials or made up from articles of heading 4601; articles of loofah: Of vegetable materials: Other baskets and bags, whether or not lined: Other: Other." The applicable duty rate is 4.5 percent *ad valorem*.

NYRL 804314, issued December 14, 1994, is hereby notified.

JOHN DURANT,

Director,

Tariff Classification Appeals Division.

[ATTACHMENT I]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,

Washington, DC.

CLA-2 R:C:T 958553 GGD

Category: Classification

Tariff No. 4602.10.8000

MR. BERNARD D. LIBERATI
MORRIS FRIEDMAN & CO.
320 Walnut Street
Philadelphia, PA 19106-3883

Re: Modification of Laredo District (now Port) Ruling Letter (DD) 804366; "Abaca Halloween Basket with Handle;" articles made directly to shape from plaiting materials; not knotted netting of twine, cordage or rope; not festive article.

DEAR MR. LIBERATI:

This letter is in response to your request dated May 8, 1995, on behalf of your client, Don Wasserman, International, for reconsideration of DD 804366, issued December 14, 1994, concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of a round decorative basket with a handle, imported from the Philippines. A sample was submitted with the request. An DD 804366, Customs classified the merchandise in subheading 5608.90.3000, HTSUSA, the provision for "Knotted netting of twine, cordage or rope; made up fishing nets and other made up nets, of textile materials: Other: Other: Other." We have reviewed that ruling and have found it to be partially in error. The correct classification is as follows:

Facts:

The sample article, identified as an "Halloween Basket" and further identified by item no. DS-036, is a round basket with a handle and an attached ghost figure holding a tiny pumpkin. The basket measures approximately 6 inches in diameter, and 8 inches from the basket's bottom to the top of the handle. The ghost figure measures approximately 6 inches in length by 3½ inches in width and is composed of unspun, untwisted fibers, which are bundled to form the head. The basket's frame and handle are composed of unspun abaca fibers wrapped around wire. Within the frame is a net-like, openwork mesh, formed by unspun, untwisted abaca fibers.

Issues:

- (1) Whether the item is classified in heading 9505, HTSUS, as a festive article.
- (2) If not classifiable as a festive article, whether the item is classifiable in heading 5608, HTSUS, as knotted netting of twine, cordage or rope * * * other made up nets, of textile materials; or in heading 4602, HTSUS, as an article made from plaiting materials.

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI's). The systematic detail of the harmonized system is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI's may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRI's.

Heading 9505, HTSUSA, provides for, among other items, festive, carnival or other entertainment articles. The EN to heading 9505 states, in part, that the heading covers:

(A) Festive, carnival or other entertainment articles, which in view of their intended use are generally made of non-durable material. They include:

- (1) Decorations such as festoons, garlands, Chinese lanterns, etc., as well as various decorative articles made of paper, metal foil, glass fibre, etc., for Christmas trees (e.g., tinsel, stars, icicles), artificial snow, coloured balls, bells, lanterns, etc. Cake and other decorations (e.g., animals, flags) which are traditionally associated with a particular festival are also classified here.

In general, merchandise is classifiable in heading 9505, HTSUSA, as a *festive article* when the article, as a whole:

1. is of non-durable material or, generally, is not purchased because of its extreme worth, or intrinsic value (e.g., paper, cardboard, metal foil, glass fiber, plastic, wood);
2. functions primarily as a decoration (e.g., its primary function is not utilitarian); and
3. is traditionally associated or used with a particular festival (e.g., stockings and tree ornaments for Christmas, decorative eggs for Easter).

An article's satisfaction of these three criteria is indicative of classification as a festive article. The motif of an item is not dispositive of its classification and, consequently, does not transform an item into a festive article.

We consider the "Halloween Basket" to be made of non-durable material (since it is not designed for sustained wear and tear, nor is it purchased because of its extreme worth or value). The item fails, however, to satisfy the second and third criteria. Although this article has a decorative aspect, baskets, by their very nature, are primarily functional. We also find that ghosts, even those holding pumpkins, are not traditionally associated with a particular festival. Ghosts are often the subject of mythology, plays, movies, comic books, and cartoons bearing no significance to a festival or holiday. With regard to pumpkins, Customs classified jack-o'-lanterns which are 1) of a pumpkin shape or form, and 2) capable of illumination as traditional Halloween articles. Although a ghost and a pumpkin may suggest a festive motif, the motif does not transform the classification of an item, particularly one that is functional, into a festive article. In light of the above, the basket is not classified in heading 9505.

Heading 5608, HTSUS, essentially covers knotted netting composed of materials that have been twisted, spun, braided, or otherwise woven together. As noted in the FACTS section, the basket is essentially composed of wire and **unspun**, untwisted fibers. As such, it is not classifiable as a textile product in heading 5608.

Heading 4602, HTSUS, provides for "Basketwork, wickerwork and other articles, made directly to shape from plaiting materials or made up from articles of heading 4601; articles of loofah." In pertinent part, note 1 to chapter 46, HTSUS, states that:

"[i]n this chapter the expression "*plaiting materials*" means materials in a state or form suitable for plaiting, interlacing or similar processes; it includes straw * * * strips of wood, strips of other vegetable material (for example, raffia, narrow leaves or strips cut from broad leaves) or bark, **unspun** [emphasis added] natural textile fibers * * *".

Although the basket is constructed from both wire and abaca, the essential character of the whole is clearly imparted by the unspun, untwisted, natural textile fibers, and not by the wire. The item is thus classified in heading 4602, HTSUS. The proper subheading is 4602.10.1800, HTSUS.

Holding:

The article identified as an "Halloween Basket," and further identified by item no. DS-036, is properly classified in subheading 4602.10.8000, HTSUSA, the provision for "Basketwork, wickerwork and other articles, made directly to shape from plaiting materials or made up from articles of heading 4601; articles of loofah: Of vegetable materials: Other baskets and bags, whether or not lined: Other: Other." The applicable duty rate is 4.5 percent *ad valorem*.

NYRL 804366, issued December 14, 1994, is hereby notified.

JOHN DURANT
Director,
Tariff Classification Appeals Division.

[ATTACHMENT J]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 R:C:T 958554 GGD
Category: Classification
Tariff No. 4602.10.8000

MR. BERNARD D. LIBERATI
MORRIS FRIEDMAN & CO.
320 Walnut Street
Philadelphia, PA 19106-3883

Re: Modification of District Ruling Letter (DD) 804367; "Grass Craft Hats;" articles made directly to shape from plaiting materials: not other made up textile articles.

DEAR MR. LIBERATI:

This letter is in response to your request dated May 8, 1995, on behalf of your client, Don Wasserman, International, for reconsideration of Newark District (now Port) Ruling Letter (DD) 804367, issued December 8, 1994, concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of articles identified as "Grass Craft Hats" imported from the Philippines. A sample was submitted with the request. In DD 804367, Customs classified the merchandise in subheading 6307.90.9989, HTSUSA, the provision for "Other made up articles, including dress patterns: Other: Other: Other: Other." We have reviewed that ruling and have found it to be partially in error. The correct classification is as follows.

Facts:

The sample article, identified as "3 PC. Sinamay Hats" and further identified by item no. DS-018, is a retail package of 3 hats (with brims measuring approximately 4 inches, 6 inches, and 8 inches in diameter) that are for decorative purposes only (e.g., to be used as wall hangings). The hats appear to be constructed of sparsely interwoven, unspun, untwisted, vegetable fibers said to be abaca. The items have low crowns that rises approximately 1 inch above the brims.

Issue:

Whether the baskets are classifiable in heading 6307, HTSUS, as an other made up textile articles, or heading 4602, HTSUS, as articles made from plaiting materials.

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the harmonized system is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not

otherwise require, the remaining GRIs may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRIs.

As noted above, this ruling reconsiders whether the decorative hats are more properly classified as made up textile articles or as articles made from plaiting materials.

Heading 6307, HTSUS, covers other made up textile articles, including dress patterns. The EN to heading 6307 indicate that the heading covers made up articles of any textile material which are not included more specifically in other headings of Section XI or elsewhere in the Nomenclature. As noted in the FACTS section, examination of the sample indicates that the goods are composed of **unspun**, untwisted fibers. As such, the hats are not classifiable as textile products.

Heading 4602, HTSUS, provides for "Basketwork, wickerwork and other articles, made directly to shape from plaiting materials or made up from articles of heading 4601; articles of loofah." In pertinent part, note 1 to chapter 46, HTSUS, states that:

"[i]n this chapter the expression "*plaiting materials*" means materials in a state or form suitable for plaiting, interlacing or similar processes; it includes straw * * * strips of wood, strips of other vegetable material (for example, raffia, narrow leaves or strips cut from broad leaves) or bark, **unspun** [emphasis added] natural textile fibers * * *."

We find that the "grass craft hats" are constructed from plaiting materials consisting of unspun natural textile fibers, and are classified in heading 4602, HTSUS. The proper subheading is 4602.10.1800, HTSUSA.

Holding:

The article identified as both "Grass Craft Hats" and "3 PC. Sinamay Hats" (item no. DS-018) are properly classified in subheading 4602.10.8000, HTSUSA, the provision for "Basketwork, wickerwork and other articles, made directly to shape from plaiting materials or made up from articles of heading 4601; articles of loofah: Of vegetable materials: Other: Other." The applicable duty rate is 2.3 percent *ad valorem*.

DD 804367, issued December 8, 1994, is hereby notified.

JOHN DURANT,

Director,

Tariff Classification Appeals Division.

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United States Court of International Trade

One Federal Plaza
New York, N.Y. 10007

Chief Judge
Dominick L. DiCarlo

Judges

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Jane A. Restani
Thomas J. Aquilino, Jr.
Nicholas Tsoucalas

R. Kenton Musgrave
Richard W. Goldberg
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ROYAL ANTHROPOLOGICAL INSTITUTE

VOL. LXXV
PART I
1945

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THE
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VOL. LXXV
PART I
1945

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H. H. S. GUNDEL

Decisions of the United States Court of International Trade

(Slip Op. 95-176)

PHILIP MORRIS INC., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 92-11-00779

[Summary judgment granted to plaintiff. Defendant's motion for summary judgment denied.]

(Decided October 31, 1995)

Arnold & Porter (Michael T. Shor and Frederick W. Guinee) for plaintiff.

Frank W. Hunger, Assistant Attorney General; *Joseph I. Liebman*, Attorney-in-Charge, Commercial Litigation Branch, Civil Division, United States Department of Justice (*John J. Mahon*) for defendant.

OPINION

POGUE, *Judge*: Invoking this Court's jurisdiction under 28 U.S.C. § 1581(a)(1988), plaintiff challenges Customs' classification of certain 1991 tobacco entries. Thus, the issue before this Court is how these entries should be classified. Customs classified the entries as "Tobacco, partly or wholly stemmed/stripped: Threshed or similarly processed: Other," under subheading 2401.20.80 of the Harmonized Tariff Schedule of the United States (HTSUS), USITC Pub. 2333, sec. IV, ch. 24, at 24-5 (1991) [hereinafter "HTSUS"]. Plaintiff claims the appropriate HTSUS subheading is 2401.30.90, "Tobacco refuse: Other [than tobacco stems]." *Id.* at 24-2. Alternatively, plaintiff claims classification under subheading 2401.10.40, "Tobacco, not stemmed/stripped: Not containing wrapper tobacco, or not containing over 35 percent wrapper tobacco: Cigarette leaf: Oriental or Turkish type not over 21.6 cm in length."

Pursuant to USCIT Rule 56, both the plaintiff and the defendant have moved for summary judgment in this matter. The parties have agreed that certain material facts are not in dispute.

UNDISPUTED FACTS

The merchandise which is the subject of this action is oriental leaf tobacco fragments, as well as other floor sweepings and other residue.

After it is picked and dried, oriental leaf tobacco is transported in bales to a processing facility where it is manipulated so as to separate the "pads" of leaves which have dried together. Tobacco fragments drop out of the machines involved in the manipulation process. These fragments, as well as other floor sweepings and other residue, are the merchandise involved here. The merchandise consists of tobacco fragments which are all smaller than 1/2 inch (1.3 cm) in diameter, and a small amount of dirt, which are a by-product of the manipulation of oriental leaf tobacco. Oriental leaf, characterized by a small leaf with no thick mid-rib, does not require stemming prior to use and is not subjected to stemming/stripping of any kind. Similarly, the tobacco involved here is not subjected to a "threshing" process whereby the tobacco leaf is beaten to separate the leaf from the stem.

DISCUSSION

Customs' classification of the merchandise at issue is presumed to be correct pursuant to 28 U.S.C. § 2639(a)(1)(1988). Accordingly, the plaintiff bears the burden of establishing that Customs' classification is incorrect.

Plaintiff meets its burden by establishing that the tobacco which is involved in this case is not stemmed/stripped. It is also not threshed.

The defendant argues that even though the tobacco is not stemmed/stripped, from all appearances it is similar to tobacco which has been stemmed/stripped. The defendant also argues that the manipulation process is sufficiently similar to threshing to support defendant's classification. This argument would have merit if plaintiff's proposed classifications were not available. However, that is not the case. The subheading chosen by the defendant requires that the merchandise be either "partly" or "wholly" stemmed or stripped. The merchandise at issue is not stemmed or stripped, and there is a heading available which specifically applies to tobacco which is not stemmed or stripped. Thus, under Rules 1 and 2(b) of the General Rules of Interpretation¹ heading 2401.10 is preferred to heading 2401.20 for this merchandise because heading 2401.10 makes specific reference to the tobacco at issue in this matter.

Our inquiry does not end here, however, because the merchandise at issue contains both tobacco fragments and dirt or other residue. Therefore, it may be classifiable under two or more headings, i.e., it may be classifiable as 2401.10 or 2401.30, tobacco refuse. Rule 3(b) of the General Rules of Interpretation provides that in such a situation classification shall be based on the material or component which gives the merchandise its "essential character." HTSUS, Gen. R. Interpretation

¹ General Rule of Interpretation 1 provides in relevant part: "Classification shall be determined according to the terms of the headings" HTSUS, Gen. R. Interpretation 1, at 31.

General Rule of Interpretation 2(b) provides in relevant part: "Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3." HTSUS, Gen. R. Interpretation 2(b), at 31.

3(b), at 31. Thus we must determine whether the merchandise at issue here is essentially tobacco or essentially waste resulting from the manipulation of tobacco leaves. The undisputed facts agreed to by the parties establish both that the merchandise is "scrap tobacco" and that it "consists of tobacco fragments * * * and a small amount of dirt."

Moreover, the parties stipulated that plaintiff's first alternative sub-heading 2401.30.90 "Tobacco refuse: Other" with duty at the rate of 35.5¢ kg is the correct classification between the two proposed by the plaintiff.

Accordingly, this Court will grant summary judgment for the plaintiff and order that judgment be entered and classification made in accordance with this opinion. Defendant's motion for summary judgment is denied.

ABSTRACTED CLASSIFICATION DECISIONS

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C95/74 10/30/95 Aquilino, J.	Throwaway Bit Corpora- tion	94-11-00667	8207.12.3060 7.2%	8207.12.6080 3.7%	Agreed statement of facts	Blaine, WA Bit bodies

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